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No. 81-2106

In the Supreme Court of the United States

OCTOBER TERM, 1981

MARIE JOHNSON, PETITIONER

v.

SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner challenges provisions of the Social Security Administration Claims Manual that prescribe the method for determining financial eligibility under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program, 42 U.S.C. 1381 *et seq.*

1. The SSI program establishes a "Federal guaranteed minimum income level" for aged, blind, and disabled people. *Schweiker* v. *Wilson*, 450 U.S. 221, 223 (1981). If an applicant and his spouse are both eligible for SSI benefits, they are treated as a unit so long as they live together. See 42 U.S.C. 1382(a)(2), (b)(2), 1382c(b). The amount of SSI benefits payable to two unmarried people is greater than the amount that would be paid to those same people if they were married to each other and living together. See 42 U.S.C. 1382(b); H.R. Rep. No. 92-231, 92d Cong., 1st Sess. 150 (1971). To eliminate any potential incentive for married

couples to pretend to separate so that they would receive greater total payments, Congress provided that if both members of a couple are eligible for SSI benefits, they are to be treated as a couple for six months after they separate. See 42 U.S.C. 1382c(b); H.R. Rep. No. 92-231, *supra*, at 150.

2. Petitioner and her husband were both eligible for SSI benefits in September 1978, when they separated. Although petitioner had no income, her husband had monthly income of $448.10; they jointly received SSI benefits of $126.30 per month. After petitioner and her husband separated, each of them received half of the same SSI benefit payment ($63.15) for the next six months (Pet. App. 4-5). Unless her circumstances changed again, petitioner became eligible for SSI benefits as an individual in April 1979.

Petitioner filed this lawsuit in the United States District Court for the Northern District of California, alleging that she had not actually received any of her husband's income after they separated in September 1978. Petitioner argued that the provisions of the Social Security Administration's Claims Manual (an internal handbook) that required calculation of her SSI benefit during the six-month period as if she and her husband were still living together were inconsistent with both the SSI statute and the agency's regulations. According to petitioner, during the six months after her separation only income that she actually received from her husband could be considered in determining the amount of her SSI benefit. The district court rejected the claim (Pet. App. 4-11), holding that "the actions of the Secretary * * * have not contravened the relevant statutory and regulatory provisions" (*id.* at 11), and the court of appeals affirmed in an unpublished memorandum (*id.* at 1-2).

3. Petitioner has abandoned the argument, presented below, that the agency must determine her SSI benefit for the six months following her separation without regard to the total benefit she and her husband previously were receiving. She now concedes (Pet. 17 & n.11, 35) that the SSI statute and regulations limit the total amount of the SSI benefit payable to an SSI beneficiary and his eligible spouse during the first six months after they separate. Petitioner apparently contends, however, that the agency may consider the income of an SSI beneficiary's eligible spouse in calculating her SSI benefit during that period only if the money was in fact transferred. In petitioner's view, a limitation on the total amount payable to the SSI beneficiary and his eligible spouse after their separation is sufficient to satisfy Congress' intention to eliminate any incentive for sham separations.

The language of the statute refutes petitioner's claim. In determining the eligibility of an SSI applicant who has an eligible spouse, his "income (together with the income of such spouse)" must be considered while they live together *and* for six months after they separate. 42 U.S.C. 1382(a)(2)(A), (b)(2), 1382c(b). Congress has thus mandated that for six months after an eligible couple separates, the husband and wife are to be treated as a couple living together. Before their separation, petitioner and her husband had an equal interest in the monthly SSI payment. Hence, issuance of separate checks to petitioner and her husband for 50% of the amount to which they are *jointly* entitled in each of the six months following their separation is fully consistent with the statute. Contrary to petitioner's contentions, nothing in the language of the statute or its history requires the Secretary to attempt any apportionment of the total benefit paid to the applicant and his spouse based on their individual non-SSI income during the first

six months after their separation.[1] Nor do the regulations cited by petitioner (Pet. 18-19) suggest that the Secretary has adopted such a practice.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1982

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[1]Petitioner relies (Pet. 24-31) on *King* v. *Smith*, 392 U.S. 309 (1968); *Lewis* v. *Martin*, 397 U.S. 552 (1970); *Shea* v. *Vialpando*, 416 U.S. 251 (1974); and *Van Lare* v. *Hurley*, 421 U.S. 338 (1975). That reliance is misplaced, for, contrary to petitioner's assertion (Pet. 24), those cases (which involve the Aid to Families with Dependent Children program, not the SSI program) do not stand for the general proposition that "absent a clear congressional statement to the contrary" income means "income actually available for use." See *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 48 & n.18 (1981); *Hammond* v. *Secretary of HEW*, 646 F. 2d 455, 457 n.3 (10th Cir. 1981); *Kollett* v. *Harris*, 619 F. 2d 134, 138 n.3 (1st Cir. 1980).

[2]Whatever petitioner's rights under state law, her husband's failure to contribute any of his non-SSI income to her during the six months after their separation does not affect either his rights under the SSI statute or hers. Petitioner is no more entitled to the entire SSI benefit than is her husband. The practice of issuing separate checks for 50% of the joint SSI benefit is fully consistent with the statute, fair, and sensible; also, as the district court recognized (Pet. App. 10), the agency thereby avoids the tremendous administrative burden of trying to apportion the benefit on the basis of non-SSI income during the six months after separation.

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